IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GREGORY ALEX DEMETER	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
	:	
CITY OF BETHLEHEM, et al.	:	NO. 03-6825

MEMORANDUM

Padova, J. **May 20, 2004**

Pro se Plaintiff Gregory Alex Demeter has brought this civil rights action pursuant to 42 U.S.C. § 1983 against the City of Bethlehem, and certain employees thereof, for declaratory relief and monetary damages arising from Defendants' alleged violations of his federal and state constitutional rights. Before the Court is Defendants' Motion for Summary Judgment. For the reasons which follow, the Motion is granted in part and denied in part.

I. BACKGROUND

During the evening hours of May 13, 2003, Officers Louis Czasar and James Smith of the City of Bethlehem Police Department ("City Police Department"), who were on routine patrol, received notification from police headquarters that a 1995 Jeep Cherokee, Pennsylvania license plate number DAZ7927, had been stolen from Fornance Road in Bethlehem Township, Pennsylvania. (Def. Ex. D.) The radio report also advised that the keys to the Jeep had been left in the vehicle and that Plaintiff, who lived in the area, was a suspect in the theft. (Id.)

At approximately 12:27 AM on May 14, 2003, Officers Czasar and

Smith observed Plaintiff, who was wearing blue jeans, a dark-colored jacket, and a yellow "fanny pack," on the 1200 block of Woodbine Street in Bethlehem Township. (Id.) The officers recognized Plaintiff because he had been arrested by Bethlehem police officers on several prior occasions for breaking into vehicles. (Demeter Dep. at 83). The officers then stopped their vehicle and, without exiting the vehicle, asked for Plaintiff's name. (Def. Ex. D.) Plaintiff advised them that his name was Gregory Demeter. (Id.)

Officers Czasar and Smith then exited their vehicle. (Id.) As the officers approached Plaintiff, they noticed a bulge in the right front pocket of Plaintiff's coat. (Id.) According to Officer Smith, Plaintiff appeared to be nervous and looked as if he was going to run away. (Id.) The officers then advised Plaintiff that he was not under arrest but that they needed to search him for weapons. (Id.) According to the police reports prepared by the officers, Officer Czasar patted down Plaintiff and removed a portable CD player from the right front pocket of Plaintiff's coat; a pill bottle, which bore the name of Margaret McHale, 2924 Fornance Road, from Plaintiff's left front coat pocket; and a set of keys from the left rear pocket of Plaintiff's pants. (Id.) The set of keys included several keys bearing the Jeep logo. (Id.) According to Plaintiff's Affidavit, after removing the CD player, "Officer Czasar continued to go through all my pockets without

patting them first." (Demeter Aff. at 2.) Plaintiff's Affidavit further states that "[t]he police removed every item from my pockets, and removed my fanny belt." (Id. at 4.)

The officers then handcuffed Plaintiff and placed him in their vehicle. (Def. Ex. D.) Officer Smith notified the City Police Department and the Bethlehem Township Police Department ("Township Police Department") that Plaintiff had been detained in connection with the Jeep theft. (Id.) Officer Knappenberger of the City Police Department advised Officer Smith that he had discovered the Jeep approximately two blocks away from where the officers had stopped Plaintiff. (Id.) The City Police Department also advised Officer Smith that the last name of the owner of the Jeep was McHale. (Id.) Officers Czasar and Smith then transported Plaintiff to the location of the Jeep and turned him over to officials from the Township Police Department. (Id.) Plaintiff was ultimately charged with receipt of stolen property, to which he pleaded guilty in state court. (Demeter Aff. at 5.)

Plaintiff alleges that Officers Czasar and Smith, in their official and individual capacities, violated his Fourth Amendment rights, and concomitant state constitutional rights, to be free from unreasonable searches and seizures. Plaintiff further asserts a municipal liability claim against the City of Bethlehem ("City") and the City Police Department. In addition to declaratory relief and compensatory damages, Plaintiff seeks punitive damages against

Officers Czasar and Smith in the amount of $500,000.

II. LEGAL STANDARD

Summary Judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c) ("Rule 56"). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, "the adverse party's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a

genuine issue for trial." Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255. "If the opponent [of summary judgment] has exceeded the 'mere scintilla' [of evidence] threshold and has offered a genuine issue of material fact, then the court cannot credit the movant's version of events against the opponent, even if the quantity of the movant's evidence far outweighs that of its opponent." Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

III. DISCUSSION

A. Unreasonable Search and Seizure[1]

With respect to Plaintiff's Fourth Amendment claim, Officers

[1]In addition to addressing his claims for unreasonable search and seizure, Plaintiff's Response to the instant Motion appears to refer to an independent claim for "unlawful detention" under the Fourth Amendment. The terms "unlawful detention" and "false imprisonment" are used interchangeably in this Circuit. Rhames v. Sch. Dist. of Philadelphia, Civ. A. No. 01-5647, 2002 WL 1740760, at *4 n.6 (E.D. Pa. July 17, 2002). Plaintiff has repeatedly advised the Court, in his written submissions and during a phone conference held on May 6, 2004, that he does not intend to pursue a "false imprisonment" claim in this action. Accordingly, the Court does not read Plaintiff's Response as newly raising an unlawful detention or false imprisonment claim in this action.

Czasar and Smith argue that they are entitled to summary judgment based on the doctrine of qualified immunity. Qualified immunity shields government officials from civil damages liability "as long as their actions could reasonably have been thought consistent with the rights they are alleged to have violated." Anderson v. Creighton, 483 U.S. 635, 638 (1987). When individual defendants in a § 1983 action assert the defense of qualified immunity, the court must first determine "whether the facts alleged, taken in the light most favorable to plaintiff, show that the officer's conduct violated a constitutional right." Kopec v. Tate, 361 F.3d 772, 776 (3d Cir. 2004). "If the Plaintiff fails to make out a constitutional violation, the qualified immunity inquiry is at an end; the officer is entitled to immunity." Bennett v. Murphy, 274 F.3d 133, 136 (3d Cir. 2002). If, however, "a violation could be made out on a favorable view of the parties' submissions, the next sequential step is to ask whether the right was clearly established." Kopec, 361 F.3d at 776 (quoting Saucier v. Katz, 533 U.S. 194, 201 (2001)). The essential inquiry is "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation confronted." Saucier, 533 U.S. at 202. This is an objective inquiry, to be decided by the court as a matter of law. Doe v. Groody, 361 F.3d 232, 238 (3d Cir. 2004)(citing Bartholomew v. Pennsylvania, 221 F.3d 425, 428(3d Cir. 2000)). Law enforcement officers who "reasonably but mistakenly" conclude that their

conduct comports with the requirements of the Fourth Amendment are entitled to immunity. Hunter v. Bryant, 502 U.S. 224, 227 (1991). Nevertheless, the Supreme Court has recognized that "it is not unfair to hold liable the official who knows or should know that he is acting outside the law." Butz v. Economou, 438 U.S. 478, 506 (1978).

Officers Czasar and Smith argue that they had reasonable suspicion to stop and frisk Plaintiff upon receipt of the radio call reporting that Plaintiff was a prime suspect in a local car theft. A police officer may, "consistent with the Fourth Amendment, conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot." Illinois v. Wardlow, 528 U.S. 119, 123 (2000)(citing Terry v. Ohio, 392 U.S. 1, 30 (1968)). Reasonable suspicion is a less demanding standard than probable cause and requires only "a minimal level of objective justification for the stop." Id. at 123. The police officer must have more than a hunch of criminal activity. Id. at 123-24. The police officer may also conduct a minimal search coincident with the stop sufficient to discover whether the person stopped is carrying a weapon. Terry, 392 U.S. at 29-30. The purpose of this limited protective search is "not to discover evidence of a crime, but to allow the officer to pursue his investigation without fear of violence . . . ." Adams v. Williams, 407 U.S. 143, 146 (1972). Thus, the search must "be confined in

scope to an intrusion reasonably designed to discover guns, knives, clubs, or other hidden instruments for the assault of the police officer." Terry, 392 U.S. at 29; see also Ybarra v. Illinois, 444 U.S. 85, 93-94 (1979)("Nothing in Terry can be understood to allow a generalized 'cursory search for weapons' or indeed, any search whatever for anything but weapons.").

Even assuming that Defendants Czasar and Smith had reasonable suspicion to stop and frisk Plaintiff, there are genuine issues of material fact as to whether the officers exceeded the permissible scope of a Terry detention. According to Plaintiff's Affidavit, Officer Czasar did not pat down his pockets prior to searching the contents of the pockets. A reasonable jury could find that the officers could have protected their safety by employing the less serious intrusion of a patdown search. See Sibron v. New York, 392 U.S. 40, 64 (1968)("[I]f a weapon is feared, a 'pat down' may suffice, and make unreasonable an actual search of the individual's pockets."); United States v. Casado, 303 F.3d 440, 448-49 (2d Cir. 2002)(holding that officer's search of pocket without first performing a patdown was unreasonable). Moreover, Plaintiff's Affidavit states that "the officers"[2] indiscriminately removed all

[2] While the bulk of the record evidence suggests that the search of Plaintiff was performed only by Officer Czasar, the Court finds that the statements made in Plaintiff's Affidavit and the reasonable inferences drawn therefrom sufficiently create a genuine issue of material fact as to Officer Smith's involvement in the search.

of the items contained in his pockets. Simply removing every bulging object as the officer searches is "undoubtedly a convenient method for detecting weapons, but one that goes beyond the limited invasion of privacy authorized by Terry and its progeny." United States v. Campa, 234 F.3d 733, 739 (1st Cir. 2000). These facts, if credited, would thus establish that the officers' frisk of Plaintiff violated the Fourth Amendment's proscription against unreasonable searches and seizures. Moreover, with respect to the second inquiry of the qualified immunity inquiry, it cannot be said as a matter of law that a reasonable officer would not have known that the conduct of Officers Czasar and Smith was in violation of the Fourth Amendment. Accordingly, the Court declines to grant the instant Motion on the basis of qualified immunity with respect to Plaintiff's Fourth Amendment claim.[3]

B. Punitive Damages

Officers Smith and Czasar argue that they are entitled to summary judgment with respect to Plaintiff's claims for punitive damages. An individual defendant may be held liable in his individual capacity for punitive damages if his actions are motivated by "evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others." Mitros v. Cooke, 170 F. Supp. 2d 504, 508 (E.D. Pa.

[3] Defendants do not raise an immunity argument with respect to Plaintiff's unreasonable search and seizure claim under the Pennsylvania constitution.

2001)(quoting Smith v. Wade, 461 U.S. 30, 56 (1983)). Under Pennsylvania law, an award of punitive damages is permitted for "conduct that is outrageous because of the defendant's evil motive or his reckless indifference to the rights of others." Rizzo v. Haines, 555 A.2d 58, 69 (Pa. 1989)(quoting Restatement (Second) of Torts § 908(2) (1977)). There is a question as to whether Plaintiff has yet offered sufficient evidence from which a reasonable jury could find that Officers Czasar and Smith acted with the culpability necessary to justify an award of punitive damages under federal or state law. However, in light of Plaintiff's *pro se* status, the Court declines to dismiss the punitive damages claims at this juncture. Accordingly, Defendants' Motion is denied with respect to the punitive damages claims.

C. Municipal Liability

The City argues that it is entitled to summary judgment with respect to Plaintiff's municipal liability claim. A municipality may only be held liable under § 1983 when the municipality itself causes a constitutional violation pursuant to an official policy or governmental custom. Monell v. Dep't of Soc. Serv. of City of N.Y., 436 U.S. 658, 690-691 (1978). To establish municipal liability, Plaintiff must "identify the challenged policy [or custom,] attribute it to the [municipality] itself, and show a causal link between execution of the policy [or custom] and the injury suffered." Losch v. Borough of Parkesburg, 736 F.2d 903,

910 (3d Cir. 1984). "Policy is made when a 'decisionmaker possess[ing] final authority to establish municipal policy with respect to the action' issues an official proclamation, policy, or edict." Andrews v. City of Philadelphia, 895 F.2d 1469, 1480 (3d Cir. 1990)(quoting Pembaur v. City of Cincinnati, 475 U.S. 469, 481 (1986)). Customs are "'practices of state officials . . . so permanent and well settled' as to virtually constitute law." Beck v. City of Pittsburgh, 89 F.3d 966, 971 (3d Cir. 1996)(quoting Andrews, 895 F.2d at 1480). Where the claimed constitutional violation was caused by the failure of the municipality to properly train or supervise its employees, a plaintiff must additionally show that the failure "amounts to deliberate indifference to the rights of [the] person with whom the police come into contact." City of Canton v. Harris, 489 U.S. 378, 388 (1989). There is no evidence in the summary judgment record that supports Plaintiff's municipal liability claim against the City. Accordingly, the Court grants the instant Motion with respect to the municipal liability claim.[4]

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[4]It appears that Plaintiff also asserts a municipal liability claim against the City Police Department. "In § 1983 actions, police departments cannot be sued in conjunction with municipalities, because the police departments are merely administrative agencies of the municipalities - not separate judicial entities." Pahle v. Colebrookdale Township, 227 F. Supp. 2d 361, 367 (E.D. Pa. 2002)(citations omitted). Accordingly, the Court grants summary judgment in favor of the City Police Department with respect to the municipal liability claim.

The Court further notes that Plaintiff's official capacity claims against Officers Czasar and Smith are duplicative of the

IV. CONCLUSION

For the foregoing reasons, the Court grants in part and denies in part Defendants' Motion for Summary Judgment. An appropriate Order follows.

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municipal liability claim asserted against the City, as "[o]fficial capacity suits . . . generally represent only another way of pleading an action against an entity of which an officer is an agent." Kentucky v. Graham, 473 U.S. 159, 165 (1985); see also id. at 169 n.14 ("There is no longer a need to bring official-capacity actions against local government officials, for under Monell, . . . local government units can be sued directly for damages and injunctive or declaratory relief."). Accordingly, the Court grants summary judgment in favor of Officers Czasar and Smith with respect to the official capacity claims.

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O R D E R

AND NOW, this 20th day of May, 2004, upon consideration of Defendants' Motion for Summary Judgment (Docket No. 13), the papers filed in support thereof, and Plaintiff's response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED IN PART** and **DENIED IN PART** as follows:

1) Defendants' Motion for Summary Judgment is **DENIED** with respect to Plaintiff's unreasonable search and seizure claim against Officers Czasar and Smith in their individual capacities.

2) Defendants' Motion for Summary Judgment is **DENIED** with respect to Plaintiff's punitive damages claims against Officers Czasar and Smith in their individual capacities.

3) Defendants' Motion for Summary Judgment is **GRANTED** with respect to Plaintiff's municipal liability claim against the City of Bethlehem and the City of Bethlehem Police Department. Judgment is entered in favor of the City of Bethlehem and the City of

Bethlehem Police Department and against Plaintiff.

4) Defendants' Motion for Summary Judgment is **GRANTED** with respect to Plaintiff's official capacity claims against Officers Czasar and Smith, and any and all such claims are **DISMISSED**.

BY THE COURT:

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John R. Padova, J.